

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
APRIL 12, 2006**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on April 12, 2006, beginning at 10:00 a.m. The meeting was tape-recorded and the tape(s) are on file at the ABC Commission in the Legal Division.

**ROLL CALL**

Commissioner Mike Joyner and Commissioner John Lyon were present at the meeting. Chairman Fox was not present.

**MINUTES OF MARCH 17, 2006 MEETING**

Commissioner Joyner made a motion to waive the reading of the minutes from the March 17, 2006, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Commissioner Joyner made a motion to approve the minutes from the March 17, 2006, meeting. Seconded by Commissioner Lyon. So Ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

As required by Executive Order Number One, Commissioner Joyner asked Commissioner Lyon if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Lyon stated that he found no conflicts of interest. Commissioner Joyner stated that he had no conflicts.

**I. HEARING CASES - 41 Listed**

Chief Counsel Fred Gregory stated that no one was present to speak on behalf of contested case #1, El Mariachi Gordo. Assistant Counsel Renee Cowick stated that the case was heard on January 12, 2006, by Senior Administrative Law Judge Fred G. Morrison, Jr. in Surf City, North Carolina. Based on the Findings of Fact and Conclusions of Law, Judge Morrison found in favor of the Commission. Ms. Cowick recommended a penalty of a 50-day suspension and a \$500.00 penalty. Commissioner Joyner made a motion to adopt the Findings of Fact and Conclusions of Law and impose a 50-day suspension and \$500.00 penalty. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Mr. Mansour Zandpoor, owner of hearing case #12, Willow Creek Inn, was present to speak on behalf of his business. Mr. Zandpoor stated that the agent found a container of homemade alcohol on the licensed premises. Mr. Zandpoor said that a friend gave the homemade alcohol to him as a gift. He went on to state that his total sale of alcohol for a year is about \$500.00. The area seats only 22 people, there is no bar area and they sell mostly wine. Mr. Zandpoor told the Commission that he does not run the type of business where violations occur and that he wanted the Commission to know that. He went on to state that he realizes that the violation is his fault.

Commissioner Joyner asked Mr. Zandpoor if he has attended an RASP Education class. Mr. Zandpoor stated that he has not. Commissioner Joyner made a motion to reduce the suspension to 5 days upon the stipulation that all the employees attend a RASP class within the next 30-days. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Mr. Robert Scott, owner of 1<sup>st</sup> Offense case #10, Sav Way 16, was present to speak on behalf of his business. Mr. Scott stated that the employee looked at the ID and still sold alcohol to the underage buyer. The employee overrode the system in order for the purchase to go through. Mr. Scott went on to state that he didn't know what he could do. Mr. Scott has only one store.

Commissioner Lyon asked Mr. Scott if he fired the employee. Mr. Scott stated that he did terminate the employee. Commissioner Joyner stated that the Commission is reminded weekly of the consequences of selling alcohol to a minor. Commissioner Lyon made a motion to reduce the penalty to \$500.00, upon the stipulation that all the employees attend a RASP Education class within the next 60 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Ashley Santea, manager of 1<sup>st</sup> Offense case #32, Azteca Mexican Restaurant, was present to speak on behalf of the business. Mr. Santea stated that there was a miscommunication problem with the employees. She went on to state that one waitress took the order and came back with some water. When she came back the underage buyer asked for a beer. That waitress asked for some ID and saw that the ID stated that the person was under 21 years old. That waitress did not serve the underage buyer alcohol. The underage buyer asked another waitress for a beer. That waitress did not ask for ID, she went ahead and served the underage buyer.

Commissioner Joyner made a motion to reduce the penalty to \$500.00 upon the stipulation that all the employees attend an RASP Education class within the next 30 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Ms. Sobee Lopez, owner of 1<sup>st</sup> Offense case #26, Tequila Mexican Restaurant, was present to speak on behalf of her business. Ms. Lopez stated the day the violation occurred they were very busy and the employee forgot to ask for ID from the underage buyer. She went on to state that they always ask for ID. The business is very close to Wake Forest University and they have a lot of students that come into to the restaurant. Before this incident, no employee had ever sold an alcoholic beverage to an underage person. Ms. Lopez also stated that they have been in business for four years.

Commissioner Joyner made a motion to reduce the penalty to \$500.00 upon the stipulation that all the employees attend an RASP Education class within the next 30 days. Seconded by Commissioner Lyon. So Ordered.

Commissioner Joyner made a motion to approve the remaining Offers in Compromise, with the exception of contested case #1, El Mariachi Gordo and hearing case #12, Willow Creek Inn, which had been ratified earlier. Seconded by Commissioner Lyon. So Ordered.

## **II. FIRST OFFENSE CASES – 36 Listed**

The following is a list of first offense violation cases in which Final Agency Decisions were signed by Commissioner Joyner on April 12, 2006, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Eastwood Service Station – 156 Lea Road, West End, NC 27376
2. C's Convenient and Package Store – 676 Hwy 22-42, Bennett, NC 27208
3. Shop and Save 6 – 3980 NC Hwy 105 South, Sugar Mountain, NC 28604
4. Value Mart – 307 Carthage Street, Sanford, NC 27330
5. Target Store T-1077 – 5420 University Parkway, Winston-Salem, NC 27105
6. Sir Pizza – 1916 North Main Street, High Point, NC 27263
7. Red Brick Pizza – 3419 Toringdon Way – Suite 100, Charlotte, NC 28277
8. Han Dee Hugos 23 – 5361 Virginia Dare Trail, Kitty Hawk, NC 27949
9. Los Aroiris Mexican Restaurant – 431 Beech Mountain Parkway, Banner Elk, NC 28604
10. Sav Way 16 – 2753 Alamance Road, Burlington, NC 27215
11. Belfast Quick Mart – 3180 Hwy 117 North, Goldsboro, NC 27530
12. Kingsway 5 – 142 West Virginia Avenue, Bessemer City, NC 28016
13. Cuzins Deli – 308 West 3<sup>rd</sup> Street, Pembroke, NC 28372
14. Sandys Convenience Mart – 100 South Pender Street, Wilson, NC 27893
15. Silver Express – 7705 South Tryon Street – Suite A, Charlotte, NC 28217
16. Storie Street Grille – 1167 Main Street, Blowing Rock, NC 28605

17. Race Way 848 – 215 Western Boulevard – Tarboro, NC 27886
18. Rubys BBQ Shack – 8 Beverly Road, Asheville, NC 28805
19. Hickory Tavern – 11504 Providence Road – Suite N, Charlotte, NC 28277
20. La Milagrosa – 4725-A High Point Road, Greensboro, NC 27407
21. Romanos Macaroni Grill – 10706 Providence Road, Charlotte, NC 28277
22. Handy Mart 66 – 125 Hwy 102 West, Ayden, NC 28513
23. Dunns Auto Service Center – 103 West Main Street, Biscoe, NC 27209
24. Allans Convenient Store – 605 Herrin Avenue, Wilson, NC 27893
25. Kounty Line Reynolds – 195 Charlotte Hwy 74-A, Asheville, NC 28803
26. Tequila Mexican Restaurant – 2802-B Reynolda Road, Winston-Salem, NC 27106
27. Roxys Convenience Store – 806 South Main Street, Louisburg, NC 27549
28. Neighbors Food Store 6 – 805 South Key Street, Pilot Mountain, NC 27041
29. Food Lion 1057 – 3207 Eastway Drive, Charlotte, NC 28205
30. Fuddruckers – 130 Charlotte Street, Asheville, NC 28801
31. Frank and Stein – 7828-B Rea Road, Charlotte, NC 28277
32. Azteca Mexican Restaurant – 3805 Tinsley Drive – Suite 101, High Point, NC 27265
33. Applebees Neighborhood Grill and Bar 34 – 4690 North Patterson Avenue, Winston-Salem, NC 27105
34. Fox and Hound Smokehouse and Tavern – 15235 John J Delaney Drive, Charlotte, NC 28277
35. Exprezit Convenience Store 116 – 103 North Boulevard Hwy 421, Clinton, NC 28328
36. Cosmos Café – 300 North College Street – Suite 101, Charlotte, NC 28202

Commissioner Joyner made a motion to approve the Offers in Compromise for the First Offense cases with the exception of 1<sup>st</sup> Offense cases #10 Sav Way 16, case #26 Tequila Mexican Restaurant and case #32 Azteca Mexican Restaurant that had been earlier ratified. Seconded by Commissioner Lyon. So Ordered.

## **II. ABC STORE LOCATION – CUMBERLAND COUNTY**

Administrator Michael Herring addressed the Commission concerning the proposed location of the Cumberland County ABC store. On March 9, 2006, the Commission received a letter from Gene Webb, General Manager of the Cumberland County ABC Board, requesting approval to open a store at 5091 Morganton Road, in Fayetteville, North Carolina. On March 20, 2006, Alcohol Law Enforcement Agent Jason Locklear conducted an investigation and found that the Cumberland County ABC Board would be leasing the property from JHD Enterprises, Ltd. The lease price is \$54,000.00 a year. The building is 8100 square feet and will be rented for a cost of \$6.67 per square foot.

The property is zoned properly. No conflict of interest exists between the property owner and the Cumberland County ABC Board.

The nearest church is True Vine Ministries Church and is approximately .3 miles from the proposed location. The nearest school is Fayetteville Academy located 1.2 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on March 6, 2006, in compliance with the ABC Commission's 30-day requirement.

There has been one phone call in opposition to the proposed site. The caller felt that the area was already too congested with traffic and the opening of a new ABC Store would add to the congestion. Three emails were received in opposition to the new store location because of the close proximity of the new ABC Store to the existing ABC Store and to businesses already engaged in the business of selling alcoholic beverages.

Mr. Herring recommended that the ABC Commission approve the new store location. Commissioner Joyner made a motion to approve the location. Seconded by Commissioner Lyon. So Ordered.

#### **IV. ABC STORE LOCATION – ROWAN/KANNAPOLIS MERGER**

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in the city of Kannapolis, North Carolina. On February 22, 2006, the Commission received a letter from Terry Osborne, General Manager of the Rowan/Kannapolis ABC Board. On March 27, 2006, Alcohol Law Enforcement Supervisor J. Richard Griffin conducted an investigation and found that the proposed location will be at the Renaissance Square Shopping Center, located at the intersection of Hwy 73 and Shiloh Church Road. The board is currently in negotiations with the landlord, Renaissance Square, LLC to lease the building for a period of ten years. The first two years the Rowan/Kannapolis ABC Board will pay \$4,500.00 a month. The next two years they will pay \$4,625.00 a month, years 5-6 they will pay \$5,125.00 a month, years 7-8 they will pay \$5,250.00 a month and the last two years they will pay \$5,500.00 a month.

The property is zoned properly. No conflict of interest exists between the property owners and the Rowan/Kannapolis ABC Board.

The nearest church is Columbus Chapel A.M. E. Zion Church and is .2 of a mile from the proposed location. The nearest school is W. R. Odell Elementary School and is 2.1 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on February 24, 2006, in compliance with the ABC Commission's 30-day requirement. The Commission has received no objections.

Mr. Herring recommended that the ABC Commission approve this location. Commissioner Lyon made a motion to approve the location. Seconded by Commissioner Joyner. So Ordered.

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in the city of Kannapolis, North Carolina at 1501 Roger Dale Carter Boulevard. On March 27, 2006, Alcohol Law Enforcement Supervisor J. Richard Griffin conducted an investigation and found that the proposed store will be located in the Gateway Shopping Center in Kannapolis, North Carolina. The board is currently in negotiations with the landlord, MPP Gateway Retail 1, LLC, to lease the building for a period of five years. The first two years the board will pay \$3,500.00 a month. The next two years they will pay \$3,712.50 a month and the last year they will pay \$3,937.50 a month.

The building is approximately 3,000 square feet. The property is properly zoned. No conflict of interest exists between the property owners and the Rowan/Kannapolis ABC Board.

The estimated completion date is October 30, 2006.

The nearest church is Odell Baptist Church and is .2 of a mile from the proposed location. The nearest school is Northwest Cabarrus High School and is just over one mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on February 24, 2006, in compliance with the ABC Commission's 30-day requirement.

There have been four phone calls in objection to the proposed location received by Terry Osborne. The callers were all from members of the Odell Baptist Church and they thought the proposed store was too close to their church. Mr. Osborne also states that the Concord ABC Board objects to the proposed location because of the close proximity to their ABC store on Poplar Tent Road. The Concord ABC store is 2.2 miles from the proposed location. Commissioner Joyner asked Mr. Herring if he felt that the 2.2 miles between the stores is too close. Mr. Herring stated that the Commission does not want the systems to compete.

Mr. Herring recommended that the ABC Commission approve this location. Commissioner Joyner made a motion to approve the proposed location. Seconded by Commissioner Lyon. So Ordered.

**VI. OTHER BUSINESS – JULY AND AGUST COMMISSION DATES**

Commissioner Joyner made a motion to approve the following future Commission dates: July 13, 2006 and August 10, 2006. Seconded by Commissioner Lyon. So Ordered.

With no further business, the meeting adjourned.

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Mike Joyner, Commissioner  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

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Tiffany Goodson, Legal Division